

# HOUSE . . . . . No. 3752

By Mr. Rushing of Boston, petition of Byron Rushing and others for legislation to make it unlawful to discriminate on the basis of height and weight. Economic Development and Emerging Technologies.

## The Commonwealth of Massachusetts

### PETITION OF:

Byron Rushing	Christine E. Canavan
Douglas W. Petersen	Patricia D. Jehlen
Gloria L. Fox	Benjamin Swan

In the Year Two Thousand and Five.

AN ACT MAKING IT UNLAWFUL TO DISCRIMINATE ON THE BASIS OF HEIGHT AND WEIGHT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 4 of said chapter 151B is hereby amended  
2 by striking out subsection 1, as appearing in the 1990 Official  
3 Edition, and inserting in place thereof the following subsection:—  
4 1. For an employer, by himself or his agent, because of the  
5 race, color, religious creed, national origin, sex, height, weight,  
6 sexual orientation, which shall not include persons whose sexual  
7 orientation involves minor children as the sex object, or ancestry  
8 of any individual to refuse to hire or employ or to bar or to dis-  
9 charge from employment such individual or to discriminate  
10 against such individual in compensation or in terms, conditions or  
11 privileges of employment, unless based upon a bona fide occupa-  
12 tional qualification.

1 SECTION 2. Said section 4 of said chapter 151B is hereby fur-  
2 ther amended by striking out subsection 2, as so appearing, and  
3 inserting in place thereof the following subsection:—

4     2. For a labor organization, because of the race, color, religious  
5     creed, national origin, sex, height, weight, sexual orientation  
6     which shall not include persons whose sexual orientation involves  
7     minor children as the sex object, age, or ancestry of any indi-  
8     vidual, or because of the handicap of any person alleging to be a  
9     qualified handicapped person, to exclude from full membership  
10    rights or to expel from its membership such individual or to dis-  
11    criminate in any way against any of its members or against any  
12    employer or any individual employed by an employer unless  
13    based upon a bona fide occupational qualification.

1     SECTION 3. Said section 4 of said chapter 151B is hereby fur-  
2     ther amended by striking out subsection 3, as so appearing, and  
3     inserting in place thereof the following subsection:—

4     3. For any employer or employment agency to print or circulate  
5     or cause to be printed or circulated any statement, advertisement  
6     or publication, or to use any form of application for employment  
7     or to make any inquiry or record in connection with employment,  
8     which expresses, directly or indirectly, any limitation, specifica-  
9     tion or discrimination as to the race, color, religious creed,  
10    national origin, sex, height, weight, sexual orientation, which shall  
11    not include persons whose sexual orientation involves minor chil-  
12    dren as the sex object, age or ancestry, or the handicap of a quali-  
13    fied handicapped person or any intent to make any such  
14    limitation, specification or discrimination, or to discriminate in  
15    any way on the ground of race, color, religious creed, national  
16    origin, sex, sexual orientation, age, ancestry or the handicap of a  
17    qualified handicapped person, unless based upon a bona fide  
18    occupational qualification.

1     SECTION 4. Said section 4 of said chapter 151B is hereby fur-  
2     ther amended by striking out subsection 3A, as so appearing, and  
3     inserting in place thereof the following subsection:—

4     3A. For any person engaged in the insurance or bonding busi-  
5     ness, or his agent, to make any inquiry or record of any person  
6     seeking a bond or surety bond conditioned upon faithful perfor-  
7     mance of his duties or to use any form of application in connec-  
8     tion with the furnishing of such bond, which seeks information  
9     relative to the race, color, religious creed, national origin, sex,

10 height, weight, sexual orientation, which shall not include persons  
11 whose sexual orientation involves minor children as the sex  
12 object, or ancestry of the person to be bonded.

1 SECTION 5. Said section 4 of said chapter 151B is hereby fur-  
2 ther amended by striking out subsection 6, as so appearing, and  
3 inserting in place thereof the following subsection:—

4 6. For the owner, lessee, sublessee, licensed real estate broker,  
5 assignee or managing agent of publicly assisted or multiple  
6 dwelling or contiguously located housing accommodations or  
7 other person having the right of ownership or possession or right  
8 to rent or lease, or sell or negotiate for the sale of such accommo-  
9 dations, or any agent or employee of such a person, or any organi-  
10 zation of unit owners in a condominium or housing cooperative:  
11 (a) to refuse to rent or lease or sell or negotiate for sale or other-  
12 wise to deny or withhold from any person or group of persons  
13 such accommodations because of the race, religious creed, color,  
14 national origin, sex, height, weight, sexual orientation, which shall  
15 not include persons whose sexual orientation involves minor chil-  
16 dren as the sex object, age, ancestry, or marital status of such  
17 person or persons or because such person is a veteran or member  
18 of the armed forces, or because such person is blind, or hearing  
19 impaired; (b) to discriminate against any person because of his  
20 race, religious creed, color, national origin, sex, height, weight,  
21 sexual orientation, which shall not include persons whose sexual  
22 orientation involves minor children as the sex object, age,  
23 ancestry, or marital status or because such person is a veteran or  
24 member of the armed forces, or because such person is blind, or  
25 hearing impaired, in the terms, conditions or privileges of such  
26 accommodations or the acquisitions thereof, or in the furnishings  
27 of facilities and services in connection therewith, or because such  
28 a person possesses a trained dog guide as a consequence of blind-  
29 ness, or hearing impairment; (c) to cause to be made any written  
30 or oral inquiry or record concerning the race, religious creed,  
31 color, national origin, sex, height, weight, sexual orientation,  
32 which shall not include persons whose sexual orientation involves  
33 minor children as the sex object, age, ancestry or marital status of  
34 the person seeking to rent or lease or buy any such accommoda-  
35 tion, or concerning the fact that such person is a veteran or a

36 member of the armed forces or because such person is blind or  
37 hearing impaired. The word “age” as used in this subsection shall  
38 not apply to persons who are minors nor to residency in state-  
39 aided or federally-aided housing developments for the elderly nor  
40 to residency in retirement communities consisting of either a  
41 structure or structures constructed expressly for use by the elderly  
42 on one parcel or on contiguous parcels of land, totalling at least  
43 ten acres in size, which communities have a minimum age  
44 requirement for residency of at least fifty-five years; provided,  
45 however, that no more than one of the persons occupying any unit  
46 may be under fifty-five years of age, exclusive of nurses or other  
47 person providing health care services to the elderly occupants of  
48 said unit.

1     SECTION 6. Said section 4 of said chapter 151B is hereby fur-  
2 ther amended by striking out subsection 7, as so appearing, and  
3 inserting in place thereof the following subsection:—

4     7. For the owner, lessee, sublessee, real estate broker, assignee,  
5 or managing agent or other covered housing accommodations or  
6 of land intended for the erection of any housing accommodation  
7 included under subsection 10, 11, 12, or 13 of section one, or  
8 other person having the right of ownership or possession or right  
9 to rent or lease or sell, or negotiate for the sale or lease of such  
10 land or accommodations, or any agent or employee of such a  
11 person or any organization of unit owners in a condominium or  
12 housing cooperative: (a) to refuse to rent or lease or sell or nego-  
13 tiate for sale or lease or otherwise to deny or withhold from any  
14 person or group of persons such accommodations or land because  
15 of race, color, religious creed, national origin, sex, height, weight,  
16 sexual orientation, which shall not include persons whose sexual  
17 orientation involves minor children as the sex object, age,  
18 ancestry, or marital status, veteran status or membership in the  
19 armed forces, blindness, hearing impairment, or because such  
20 person possesses a trained dog guide as a consequence of blind-  
21 ness or hearing impairment of such person or persons; (b) to dis-  
22 criminate against any person because of his race, color, religious  
23 creed, national origin, sex, height, weight, sexual orientation,  
24 which shall not include persons whose sexual orientation involves  
25 minor children as the sex object, age, ancestry, or marital status,

26 veteran status or membership in the armed services, blindness, or  
27 hearing impairment, or because such person possesses a trained  
28 dog guide as a consequence of blindness or hearing impairment in  
29 the terms, conditions or privileges of such accommodations or  
30 land of the acquisition thereof, or in the furnishing of facilities  
31 and services in the connection therewith, or (c) to cause to be  
32 made any written or oral inquiry or record concerning the race,  
33 color, religious creed, national origin, sex, height, weight, sexual  
34 orientation, which shall not include persons whose sexual orienta-  
35 tion involves minor children as the sex object, age, ancestry, mar-  
36 ital status, veteran status or membership in the armed services,  
37 blindness, hearing impairment or because such person possesses a  
38 trained dog guide as a consequence of blindness or hearing  
39 impairment, of the person seeking to rent or lease or buy any such  
40 accommodation or land; provided, however, that this subsection  
41 shall not apply to the leasing of a single apartment or flat in a two-  
42 family dwelling, the other occupancy unit of which is occupied by  
43 the owner as his residence. The word “age” as used in this subsec-  
44 tion shall not apply to persons who are minors, nor to residency in  
45 state-aided or federally-aided housing developments for the  
46 elderly nor to residency in retirement communities consisting of  
47 either a structure or structures constructed expressly for use by the  
48 elderly on one parcel or on contiguous parcels of land, totalling at  
49 least ten acres in size, which communities have a minimum age  
50 requirement for residency of at least fifty-five years; provided,  
51 however, that no more than one of the persons occupying any unit  
52 may be under fifty-five years of age, exclusive of nurses or other  
53 person providing health care services to the elderly occupants of  
54 said unit.

1     SECTION 7. Said section 4 of said chapter 151B, as so  
2 appearing, is hereby further amended by striking out subsection 8  
3 and inserting in place thereof the following subsection:—

4     8. For the owner, lessee, sublessee, or managing agent of, or  
5 other person having the right of ownership or possession of or the  
6 right to sell, rent or lease, commercial space: (1) To refuse to sell,  
7 rent, lease or otherwise to deny or withhold from any person or  
8 group of persons such commercial space because of race, color,  
9 religious creed, national origin, sex, height, weight, sexual orien-

10 tation, which shall not include persons whose sexual orientation  
11 involves minor children as the sex object, age, ancestry or marital  
12 status of such person or persons. (2) To discriminate against any  
13 person because of his race, color, religious creed, national origin,  
14 sex, height, weight, sexual orientation, which shall not include  
15 persons whose sexual orientation involves minor children as the  
16 sex object, age, ancestry or marital status in the terms, conditions  
17 or privileges of the sale, rental or lease of any such commercial  
18 space or in the furnishing of facilities or services in connection  
19 therewith. (3) To cause to be made any written or oral inquiry or  
20 record concerning the race, color, religious creed, national origin,  
21 sex, sexual orientation, which shall not include persons whose  
22 sexual orientation involves minor children as the sex object, age,  
23 ancestry or marital status of a person seeking to rent or lease or  
24 buy any such commercial space. The word “age” as used in this  
25 subsection shall not apply to persons who are minors, nor to resi-  
26 dency in state-aided or federally-aided housing developments for  
27 the elderly nor to residency in self-contained retirement communi-  
28 ties constructed expressly for use by the elderly and which are at  
29 least twenty acres in size and have a minimum age requirement  
30 for residency of at least fifty-five years.

1 SECTION 8. Said section 4 of said chapter 151B, as so  
2 appearing, is hereby further amended by striking out the last para-  
3 graph and inserting in place thereof the following paragraph:—

4 Nothing contained in this chapter or any rule or regulation  
5 issued by the commission shall be interpreted as requiring any  
6 employer, employment agency or labor organization to grant pref-  
7 erential treatment to any individual or to any group because of the  
8 race, color, religious creed, national origin, sex, height, weight,  
9 sexual orientation, which shall not include persons whose sexual  
10 orientation involves minor children as the sex object, age or  
11 ancestry of such individual or group because of imbalance which  
12 may exist between the total number or percentage of persons  
13 employed by any employer, referred or classified for employment  
14 by any employment agency or labor organization, admitted to  
15 membership or classified by any labor organization or admitted to  
16 or employed in, any apprenticeship or other training program, and  
17 the total number or percentage of persons of such race, color, reli-

18 gious creed, national origin, sex, sexual orientation, which shall  
19 not include persons whose sexual orientation involves minor chil-  
20 dren as the sex object, age or ancestry in the commonwealth or in  
21 any community, section or other area therein, or in the available  
22 work force in the commonwealth or in any of its political subdivi-  
23 sions.

1 SECTION 9. Section 92A of chapter 272 of the General Laws,  
2 as so appearing, is hereby amended by striking out the first para-  
3 graph and inserting in place thereof the following paragraph:—

4 No owner, lessee, proprietor, manager, superintendent, agent or  
5 employee of any place of public accommodation, resort or amuse-  
6 ment shall, directly or indirectly, by himself or another, publish,  
7 issue, circulate, distribute or display, or cause to be published,  
8 issued, circulated, distributed or displayed, in any way, any adver-  
9 tisement, circular, folder, book, pamphlet, written or painted or  
10 printed notice or sign, of any kind or description, intended to dis-  
11 criminate against or actually discriminating against persons of any  
12 religious sect, creed, class, race, color, denomination, sex, height,  
13 weight, sexual orientation, which shall not include persons whose  
14 sexual orientation involves minor children as the sex object,  
15 nationality, or because of deafness or blindness, or any physical or  
16 mental disability, in the full enjoyment of the accommodations,  
17 advantages, facilities or privileges offered to the general public by  
18 such places of public accommodation, resort or amusement.

1 SECTION 10. Said chapter 272 is hereby further amended by  
2 striking out section 98, as so appearing, and inserting in place  
3 thereof the following section:—

4 Section 98. Whoever makes any distinction, discrimination or  
5 restriction on account of race, color, religious creed, national  
6 origin, sex, height, weight, sexual orientation, which shall not  
7 include persons whose sexual orientation involves minor children  
8 as the sex object, deafness, blindness or any physical or mental  
9 disability or ancestry relative to the admission of any person to, or  
10 his treatment in any place of public accommodation, resort or  
11 amusement, as defined in section ninety-two A, or whoever aids  
12 or incites such distinction, discrimination or restriction, shall be  
13 punished by a fine of not more than twenty-five hundred dollars

14 or by imprisonment for not more than one year, or both, and shall  
15 be liable to any person aggrieved thereby for such damages as are  
16 enumerated in section five of chapter one hundred and fifty-one  
17 B; provided, however, that such civil forfeiture shall be of an  
18 amount not less than three hundred dollars; but such person so  
19 aggrieved shall not recover against more than one person by  
20 reason of any one act of distinction, discrimination or restriction.  
21 All persons shall have the right to the full and equal accommoda-  
22 tions, advantages, facilities and privileges of any place of public  
23 accommodation, resort or amusement subject only to the condi-  
24 tions and limitations established by law and applicable to all per-  
25 sons. This right is recognized and declared to be a civil right.